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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

NOV 7 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

)  
Amendment to the Commission's Rules to )  
Establish Rules and Policies Pertaining )  
to a Mobile Satellite Service in the )  
1610-1626.5/2483.5-2500 MHz )  
Frequency Bands )

CC Docket No. 92-166

**Opposition of Loral/QUALCOMM Partnership, L.P., Motorola Satellite  
Communications, Inc. and TRW Inc. to Emergency Petition for Stay**

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**November 7, 1994**

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**Opposition of Loral/QUALCOMM Partnership, L.P., Motorola Satellite Communications, Inc. and TRW Inc. to Emergency Petition for Stay**

Loral/QUALCOMM Partnership, L.P., Motorola Satellite Communications, Inc., and TRW Inc., ("Joint Applicants"), hereby respectfully oppose the Emergency Petition for Stay filed November 4, 1994 by Mobile Communications Holdings, Inc. ("MCHI") in the above captioned proceeding. Like MCHI, the Joint Applicants are applicants for authorization to use the 1.6/2.4 GHz bands for MSS LEO systems. In its Petition, MCHI urges the Commission to stay that portion of the Commission's Report and Order in CC Docket No. 92-166, Establishment of Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5 MHz Frequency Bands, 59 Fed. Reg. 53,294 (Oct. 21, 1994) ("Report and Order"), which requires applicants in the Above 1 GHz Mobile Satellite Service ("MSS") to submit updated legal and financial qualifications on November 16, 1994.

MCHI's filing is simply an effort to derail the entire licensing process -- now approaching its fourth year -- because it cannot make its financial qualification showing. In fact, MCHI has been offered far greater flexibility and latitude than the Commission initially proposed in the Notice of Proposed Rulemaking where the Commission proposed that the domestic fixed-satellite service financial

standard would apply to the MSS Above 1 GHz proceeding.<sup>1</sup>

The Joint Applicants oppose the petition of MCHI and ask that the Commission dismiss it forthwith. MCHI has stated no reason justifying stay of any portion of the Commission's order nor met any of the legal requirements for a stay.<sup>2</sup> MCHI's claims that "an auction plan will be implemented" and that irreparable harm will result to MCHI because the Commission's auction rules for MSS Above 1 GHz applicants do not provide for dissemination of licenses "among a wide variety of applicants, including small businesses"<sup>3</sup> are speculative and unjustified. MCHI simply disagrees with the Commission's decision that the public interest in expediting the introduction of new telecommunications service and maintaining the leadership role of the United States in promoting global development outweigh the possible benefits that might flow from auction rules for MSS Above 1 GHz which provide for participation by designated entities.<sup>4</sup> This is a matter which MCHI should raise on reconsideration, or, if and when the Commission publishes an auction notice for the 1.6/2.4 GHz bands.<sup>5</sup>

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<sup>1</sup> Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC 2d 1094 (1994), citing Licensing Space Stations in the Domestic Fixed-Satellite Service, 50 Fed. Reg. 36071 (Sept. 5, 1985).

<sup>2</sup> See Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F. 2d 921, 925 (D.C. Cir. 1958).

<sup>3</sup> Petition for Stay, at p. 2.

<sup>4</sup> Report and Order, paras. 79 and 80.

<sup>5</sup> The Joint Applicants disagree with MCHI's statement that mutual exclusivity would be created merely by the filing of an amendment by AMSC.

**I. MCHI Has Not Demonstrated Standing or the Facts Necessary for the Relief it Seeks.**

As an initial matter, MCHI has not established that it is entitled to the relief it seeks. Under the Commission's procedure for processing the MSS Above 1 GHz applications, all six applicants would have to demonstrate that they are financially qualified on November 16, 1994, or all six would have to defer this showing until January, 1996.<sup>6</sup> Thus, the event for which MCHI seeks a stay necessarily includes a showing by MCHI that it can meet the financial qualifications standard established for this service. If MCHI cannot meet this standard, then its request is moot because not all six applicants would have qualified. Accordingly, the Commission should at least dismiss MCHI's request unless MCHI puts on the record and demonstrates its financial qualifications as required by Section 25.143(b)(3) of the Commission's Rules.

Moreover, the facts upon which MCHI relies are too speculative to form a basis for the relief it seeks. MCHI states that an auction will occur, based on statements in the trade press that the American Mobile Satellite Corporation ("AMSC"), may file a LEO application on November 16, 1994. The prospective actions of AMSC, or any other pending applicant, are totally speculative and should be afforded no weight whatsoever. In fact, AMSC officials also have stated that they may seek to use a portion of the MSS Above 1 GHz spectrum as additional spectrum for their currently-licensed geostationary satellite system. Indeed, the Commission specifically identifies this possibility for AMSC in the Report and Order.<sup>7</sup>

Even if AMSC were to file an amended application for a LEO system on November 16, 1994, which in all respects fulfills the Commission's legal, financial and technical requirements, there is no assurance that all of the other applicants

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<sup>6</sup> Report and Order, at para. 42.

<sup>7</sup> Supra., at para. 20.

would submit fully conforming amendments, including financial qualifications, on November 16, 1994. The Commission provides that an auction will take place only in the following two cases: one, if all six applicants are able to establish their financial qualifications by the November 16, 1994 deadline for amended applications, or alternatively, if all six applicants defer their financial showings until January 1996 and all are then deemed financially qualified.<sup>8</sup> Mere speculation concerning what other applicants may do cannot justify a stay of the Commission's requirements to submit legal and financial qualifications.

## II. MCHI Has Not Met the Standard for Grant of a Stay of Agency Action.

The standard for grant of a stay of agency action is well-established. The Commission considers: (1) likelihood of movant's success on the merits; (2) the potential for irreparable harm to movant absent a stay; (3) the potential for harm to others if a stay is issued; and (4) the effect of a stay on the public interest. See Inside Wiring DeTariffing, 61 RR 2d 1496, 1498 (1987); see also Washington Area Transit Comm'n v. Holiday Tours, Inc., 559 F. 2d 841 (D.C.Cir. 1977); Virginia Petroleum Jobbers Assoc. v. FPC, 259 F. 2d 921 (D.C. Cir. 1958). In this situation, all of these factors militate against grant of MCHI's request.

### A. MCHI is unable to demonstrate irreparable harm.

MCHI is in error in suggesting that it will suffer irreparable harm if the Commission does not act to stay its requirement for filing, by November 16, 1994, of legal and financial requirements. MCHI, along with all other pending MSS Above 1 GHz applicants, has the opportunity to defer its demonstration of financial qualifications until January 31, 1996. Thus, MCHI's rights will not be eclipsed on November 16, 1994 as MCHI suggests. In fact, as referenced above, the Commission has expressly provided for the possibility that some applicants may not be able to establish their financial qualifications by November 16, 1994,

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<sup>8</sup> Supra., para. 42.

particularly in view of the fact that feeder link frequencies may not be assigned until after the next International Telecommunication Union (ITU) World Radiocommunication Conference to be held in November 1995 (WRC-95). Consequently, contrary to MCHI's expressed fears, it need not make "irreversible structural changes and/or commitments which have no necessary relationship to what will be required by the financial community to fund the construction and operation of this system."<sup>9</sup> Thus, MCHI's showing of alleged harm fails to support its request.

**B. MCHI is unlikely to prevail on the merits.**

MCHI argues that the Commission's failure to consider small business in establishing its auction design for MSS Above 1 GHz "patently violates Section 309(j) of the Communications Act of 1934, as amended," and thus will enable MCHI to prevail on the merits in this case.<sup>10</sup> The Commission carefully considered the question of including small business in establishing its auction design, and determined that other public interest benefits outweighed the possible benefits of developing such rules.<sup>11</sup> Section 309(j)(4) does not require the Commission to provide for small businesses in every auction, but rather leaves this issue to the Commission's discretion. MCHI has failed to show that under the circumstances present for the Big LEO applicants the Commission has abused that discretion.<sup>12</sup>

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<sup>9</sup> Petition for Stay, at p. 4. As wholly speculative as these alleged "structural changes and/or commitments" are, MCHI is aware that it may not amend its ownership in such a manner as to affect control of the applicant.

<sup>10</sup> Petition for Stay, at p. 10.

<sup>11</sup> Report and Order, para. 80.

<sup>12</sup> Moreover, MCHI has never attempted to demonstrate that it qualifies as a "small business" under any standard developed to date by the Commission.

C. Other interested parties would suffer harm if the stay were granted.

MCHI seeks to stay the November 16, 1994 filing date for all parties in this proceeding, including the Joint Applicants and others which may be prepared to demonstrate their financial qualifications on November 16. The Commission's establishment of the two-tiered financial qualifications process (November 16, 1994 and January 31, 1996) was developed to provide fairness to all applicants. The stay sought by MCHI would preclude the filing of financial qualifications by the Joint Applicants and others, thereby resulting in a delay in the licensing process, contrary to the Commission's determination that "(G)iven the national and other public interest benefits of ensuring the United States' global leadership in providing these important new satellite services, we also plan to process these applications on an expedited basis, with action anticipated by January 31, 1995."<sup>13</sup> A delay in the licensing of qualified systems would clearly harm the interests of the Joint Applicants and others which may be prepared to proceed with system construction and implementation at the earliest possible date.<sup>14</sup>

D. The public interest would be harmed by a grant of the requested stay.

The Commission has recognized throughout this proceeding that prompt grant of authorizations to qualified Big LEO applicants is in the public interest.<sup>15</sup> Grant of a stay would delay the licensing process because the Commission would not have the necessary information to determine whether the applicants are legally and financially qualified to receive an initial authorization. The public interest in obtaining new communications services as well as the role of the

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<sup>13</sup> Report and Order, para. 39.

<sup>14</sup> The risk of proceeding with construction in anticipation of the issuance of licenses by January 31, 1995 cannot be equated with the risks that would be borne by the Joint Applicants and others in the event licensing is delayed indefinitely as a result of MCHI's petition.

<sup>15</sup> Report and Order, at paras. 2-5.



United States in the global information infrastructure would be harmed, not furthered, by the grant of a stay. Moreover, resolving the issue raised by MCHI could cause needless delay in bringing this service to the public, because it is speculative as to whether all applicants will meet the qualification standards on November 16, and thereby invoke an auction.

### III. MCHI Should Be Estopped From Bringing Its Petition for Stay.

The Commission's Report and Order was released over three weeks ago, on October 14, 1994. The date for filing amendments to applications and the procedures for further processing of those applications have been known since that time. The possibility that AMSC would file a LEO application/amendment on November 16 was expressly permitted by the Report and Order<sup>16</sup> and contemplated by the Commission's discussion of further application processing.

All relevant information regarding the circumstances which would allegedly cause MCHI harm was available to it on October 14. Now, at the eleventh hour, MCHI has brought an "emergency" petition, complaining about issues which are more properly raised on reconsideration. If MCHI had a genuine concern, it could have filed a Petition for Reconsideration or a Petition for Review weeks ago upon publication of the Big LEO rules in the Federal Register.<sup>17</sup>

MCHI has sat on its rights for weeks, and now seeks to obstruct the Commission's schedule for prompt licensing of qualified Big LEO applicants. The Commission should not allow MCHI's last minute petition to delay this proceeding.<sup>18</sup> There is no emergency; MCHI is in control of its own fate.

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<sup>16</sup> Supra., at para. 20.

<sup>17</sup> See 59 Fed. Reg. 53294 (Oct. 21, 1994).

<sup>18</sup> It is noted that MCHI filed this petition at the close of business on Friday, November 4, 1994, serving the interested parties by U.S. mail, and failing to notify the undersigned counsel that this petition had been filed, even while requesting extraordinary relief from the Commission by 3 p.m. November 8, 1994.

Accordingly, the Commission should maintain its course toward licensing qualified MSS LEO applicants in January, 1995 and deny MCHI's petition as untimely as well as legally insufficient.

IV. Conclusion

MCHI's arguments for a Stay of the Commission's requirement for filing of legal and financial requirements in no way meet the requirements for a stay. The Commission's rules for MSS Above 1 GHz applicants are supported by the record, based on sound public interest arguments and do not prejudice MCHI. The MCHI Motion for Stay must be denied.

Respectfully submitted,

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**Certificate of Service**

I, Andrew F. Taylor, hereby certify that the forgoing "Opposition of Loral/QUALCOMM Partnership, L.P." was served by first-class mail, postage prepaid, this 7th day of November 1994, on the following persons:

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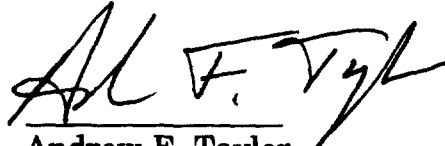
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